(36)

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, C.J.

WRIT PETITION No.2669 of 2002

PETITIONER Smt. Vandana Malviya, aged about 36 years, W/o Shri Vibhash Malviya R/o Ward No.6 Baniyapara, Khairagarh, Distt. Rajnandgaon

Vs.

RESPONDENTS

1. State of Chhattisgarh Through: Secretary Health and Family Planning Department, D.K.S. Bhavan, Mantralay, Raipur (C.G.)
2. Distt. Family Planning Office, District Hospital, Rajnandgaon (C.G.)

WRIT PETITION No.1037 of 2004

PETITIONER Smt. Gayatri Devi Banjare, aged about 29 years, W/o Shri Krishna Kumar, R/o Village Hasod, Thana and Tahsil Jaijaipr, Distt. Jangir (Champa) (C.G)

Vs.

RESPONDENTS

1. The State of Chhattisgarh, Through Secretary, Health and Family Planning Department, D.K.S. Bhawan, Raipur (C.G.)
2. District Family Planning Office, District Hospital, Janjgir (Champa)
3. The Collector Janjgir (Champa)
4. Block District Officer, District Hospital, Janjgir (Champa)

Present : Shri R.S. Baghel, learned counsel for the petitioner in W.P. No.2669 of 2002.
Shri Parag Kotecha, learned counsel for the petitioner in W.P. No.1037 of 2004.
Shri Yashwant Singh, learned Govt. Advocate for the State of C.G and its authorities.

ORAL ORDER

(Passed on 19th September, 2006)

In both the cases, tubectomy done on the petitioners-women has resulted in failure. In these writ petitions, they claim that the failure was due to negligence on the part of the State doctors who performed the surgeries. So alleging, the petitioners have claimed compensation/ damages for the loss incurred by them on account of the arrival of unwanted child after the surgeries.

(2) In W.P. No.1037 of 2004, on behalf of the respondents, return is filed. In the return it is contended that the methods of sterilization, so far known to the medical sciences are not 100% safe and secure. In spite of due care and caution exercised by doctors, there is likelihood of failure. It is also claimed that even after the sterilization, a woman can become pregnant due to natural causes. It is stated that despite sterilization operations and despite of technical precaution being taken, intrauterine pregnancy occurs subsequently in 0.3% of the cases.

(3) In view of the pleadings of the parties, what emerges for decision-making are factual controversies. In the first place, it becomes imperative to know whether the cases of the petitioners could be brought under the expected category of 0.3% of the cases where failures occur or the petitioners' cases could be brought under the other head where the operating Surgeons did not exercise due care and caution expected of them in performing the surgeries. Secondly, the actual damage sustained by the petitioners on account of the arrival of unwanted child is a thing to be decided on the basis of substantive evidence that may be adduced before the Court. It is not as if a standard is fixed by the law to assess damage solely on the fact that an unwanted child has arrived in the family. The actual damage that may be sustained by each individual mother or

father would depend upon various situations and factors. These factual controversies, it is trite, cannot be decided in a summary proceeding under Article 226 of the Constitution of India on the basis of affidavit and counter affidavit. The dispute has to be resolved only before the competent civil Court after giving full opportunities to the parties to lead evidence and tendering the witnesses of parties to be cross-examined by each other. If the High Court were to under take such issues for adjudication under Article 226 of the Constitution on the basis of affidavits and counter affidavits, there is every likelihood of failure of justice. In that view of the matter, I decline to entertain these writ petitions. Accordingly, both the writ petitions are dismissed, however, reserving liberty to the petitioners to workout their legal remedies before the jurisdictional civil Court, if they are so advised. No costs.

Sd/-
Chief Justice